



materially alters the legal relationship between the parties by modifying the defendant's behavior in a way that directly benefits the plaintiff."); Lifescan Inc. v. Home Diagnostics, Inc., No. Civ.A. 96-597-JJF, 2001 WL 1339405, at \*2 (D. Del Oct. 30, 2001) (concluding that "neither party has prevailed because the accused product was found not to infringe, and the patent was found to be valid and enforceable."); B. Braun Med., Inc. v. Abbott Labs., 38 F. Supp. 2d 393, 395 (E.D. Pa.), aff'd, 230 F.3d 1373 (Fed. Cir. 1999) ("[B]oth Braun and Abbott won and lost. Braun secured a declaration of validity of its patent but did not recover damages. Abbott secured a declaration that its products do not infringe, leaving Abbot free to make and sell them, but did not recover damages."); Compro-Frink Co. v. Valk Mfg. Co., 595 F. Supp. 302, 303 (E.D. Pa. 1982) (entering judgment in favor of defendant on plaintiff's claim of patent infringement, and in favor of plaintiff on defendant's counterclaim of patent invalidity and concluding "neither party was a prevailing party as to the respective claim asserted by each party, but both were prevailing parties to the extent each was defending against the claim of the other"), and that, accordingly, the court may exercise its discretion to deny costs to either party, Sozio v. Sears, Roebuck, and Co., No. Civ.A. 90-7483, 1994 WL 229660, at \*1 (E.D. Pa. May 26, 1994) (noting that "[i]t is within the Court's discretion to determine whether, and to what extent, costs should be awarded to the prevailing party" (citing Copperweld Steel Co. v. Demag-Mannesmann-Bohler, 624 F.2d 7, 9 (3d Cir. 1980)); Bentz v. Am. Red Cross, No. Civ.A. 88-7608, 1990 WL 94011, at \*6 (E.D. Pa. July 3, 1990) (noting that the court has discretion to deny costs to the prevailing party (citing Delaney v.

Capone, 642 F.2d 57, 58 (3d Cir.), cert. denied, 454 U.S. 828 (1981)); see FED. R. CIV.

P. 54(d)(1), it is hereby ORDERED that the Clerk of Court shall not tax against plaintiff any costs enumerated in the bill of costs (Doc. 169).

S/ Christopher C. Conner  
CHRISTOPHER C. CONNER  
United States District Judge